1947

File No. Cr. A. DWR 47

Legal DEPARTMENT

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Subject:— Criminal Appeals in the High Court of Bombay against the orders of the acquittals from Dharwar District.

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File No. ~~Dhr~~ Cr. A. DWR/47

Std. Scott. Slip 24-B

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Judgment recorded by the High Court in the case of Imperator Vs. Madivalappa Basappa No. 1 and Shiddappa Basappa No. 2 in Criminal Revision Application No. 119 of 1947.

The Government Pleader for the Government of the Province of Bombay.

Mr. N. S. Anikhindi for Mr. G. R. Madbhavi for the accused.

Coram: Sen and Gajendragadkar, JJ.
26th June 1947.

Oral Judgment (Per Gajendragadkar, J.):-

This is an application for enhancement of the sentences passed on two accused persons by the learned Honorary Magistrate, First Class, Dharwar, in Criminal Case No. 544 of 1946 on his file. The two accused were charged with having committed offences punishable under Sections 457 and 380 of the Indian Penal Code in that on the 7th of August 1946 at night time both of them broke into the house of the police patil of Garag and committed theft of ornaments clothes and cash the total value of which was about Rs. 2789/-. Some of this property was concealed by the accused in a paddy field nearby, while some other was discovered by them and produced by them before the police. At the trial both the accused pleaded guilty to the charge. Accused No. 2 was working as a servant with the Police Patil for some time. He met accused No. 1 and planned to commit this theft. The plan was carried out at night and property of considerable value was stolen by them. The learned Magistrate accepted

accepted the plea of the accused, and, having taken into account the evidence led by the prosecution, convicted the accused of both the offences ~~x~~ charged. He sentenced them to undergo rigorous imprisonment for one week for the offence under Section 457 and as regards the offence under Section 380 he directed that they should be released on probation of good conduct on their entering into a bond for good behavious and to appear before him and receive sentence when called on during the period of one year with one surety for a sum of Rs. 500/- each under Section 562 of the Criminal Procedure Code. In support of these lenient sentences passed by him the learned Magistrate referred to the fact that both the accused were comparatively young and were in jail custody for nearly a fortnight before the date of conviction. He also mentioned that in the statement made by them before the Court wherein they had pleaded guilty to the charge they had expressed sincere repentance for the offences which they had committed. It is against this order of sentence that the present revisional application has been made by the Government.

As regards the order of conviction passed by the learned Magistrate for both the offences under Sections 457 and 380 it seems to us that the proper course would be to convict the accused of only one offence under Sec. 457 (Vide: Imperatrix vs. Mahavir, 1 Bom. L. R. 69). In that view the order of conviction and sentence passed by the learned Magistrate against both the accused for the offence under Section 380 must be set aside. On their plea and on the evidence adduced by the prosecution the conviction passed by the learned Magistrate against both the accused for the offence under Section 457 must, however, be affirmed. The reasons given by the learned Magistrate in support of the very lenient sentence passed

passed by him appear to us to be thoroughly unsound. The property stolen was worth about Rs. 3000/- and a part of it was deliberately concealed in a paddy field. Accused No. 2 was a servant of the Police Patil and in that sense that is an aggravating circumstance of his offence. On the whole we think that the ends of justice will be met if accused No. 2 who in 24 years of age is directed to undergo rigorous imprisonment for nine months and accused No. 1 who is 22 years of age to undergo rigorous imprisonment for six months and we direct accordingly.

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7 75 Abs

Judgment recorded by the High Court in the case of Imp. Vs. Damodar Upendra Prabhu in the criminal Revisional Application No.41 of 1947.

Coram: Sen and Gajendragadkar JJ

The Government Pleader for the Crown. 25th June 1947.
Mr. J.R. Vaidya for the Accused.

Oral Judgment (Per Gajendragadkar J)

This is an application made by the Government of the Province of Bombay praying that the sentence passed against the accused should be enhanced. The accused - Damodar Upendra was tried in the Court of the Sub-Divisional Magistrate, First Class, Hubli, for having committed an offence punishable under Defence of India Rule 81(4) read with rule 121 and with the District Magistrate's Order No.WAR S/82 dated 13.9.1944. The case for the prosecution was that on the 8th September 1946 one Police Constable of Hubli saw that the accused was removing with the aid of a hamal one hold-all to the motor-stand. The hold-all - appeared to be unduly heavy and bulky to the Police - Constable and that provoked his suspicion. On an inquiry and a search which followed the said inquiry it was found that inside the hold-all was concealed sugar weighing about 66 lbs. Since the accused had asked the hamal to take the hold-all to the motor-stand, it was apprehended that he was attempting to remove the sugar from Hubli to Sirsi where the accused was proceeding and a charge sheet was sent against him that he attempted to remove 66 lbs. of sugar in contravention of the order prohibiting the transport of sugar amongst other things from one place to another . The case was tried summarily and when the charge was read to the accused he pleaded guilty . The learned Magistrate acted upon that plea and convicted him of the charge

of the offence charged and sentenced him to suffer rigorous imprisonment for one month.

Mr.Vaidya who appears for the accused has contended that the plea of guilty may have been made by the accused without fully understanding what the essential elements of the charge really were and he has suggested that even if the facts set out in the charge are accepted, rule 121 of the Defence of India Rules cannot be properly invoked. We are, however, unable to accept this contention. The accused was probably proceeding to Sirsi and when he took the hold-all with him and took all the precautions of concealing the sugar inside the hold-all, it seems to us that the only inference that could be drawn from this conduct was that he was aware of the notification prohibiting the transport of sugar and wanted to remove it as he was proceeding to Sirisi by a bus. We are not satisfied that the accused made his plea of guilty without fully realising what the charge against him was.He does not appear to be an illiterate person and it does appear, that the learned Magistrate did explain the charge to him when he recorded his plea; the ~~orde~~ therefore order of conviction passed against the accused is right and must be affirmed. That raises the question of sentence. It is obvious that offences of this type cannot be treated as having been adequately punished by an order as to payment of fine in all cases and such sentences seem to us to be grossly inadequate particularly when the amount of the fine is such a small amount as Rs.25/ -. It is quite true that it is not shown that the accused is a dealer in sugar and wanted to enrich himself by transporting this sugar from hu li to Sirsi, but even if he was taking this

taking this sugar for his own personal use contrary to the notification which has obviously been issued in the interest of society as a whole, it cannot be said that the commission of such an offence has been properly punished by the imposition of a fine of Rs.25/-. Having regard to all the circumstances, we think that in the interests of justice it is necessary to direct that the accused should undergo rigorous imprisonment for one month and pay a fine of Rs.100/- in default undergo further rigorous imprisonment for a month.

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13 87 37

Criminal Applications.

In the High Court, Bombay
for enhancement of sentence
(Dharwar).

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 7653
Bombay Castle, 24th July 1947.

x/13

Read Government Resolution, Legal Department No. 7778 dated the 7th November 1946.

1/p. 22

Letter from the Government Pleader, High Court, Bombay

In the Court of Sub-Divisional Magistrate, Hubli City.	:	No. 1786 dated the 1st/2nd July 1947 stating that Criminal Revision Application No. 41 of 1947
S. T. No. 177 of 1946.	:	
Imperator ..... Plaintiff.	:	
vs.	:	
Damodar Upendra Kulkarni... Accused.	:	
(Offence under rule 81(4) of the Defence of India Rules, 1939).	:	

filed by Government for enhancement of sentence passed in respect of the Accused in the case noted in the margin was heard by the High Court, Bombay on 25th June 1947 when the following order was passed :-

"The Court confirms the conviction recorded against the accused but enhances the sentence to one month's R.I. and a fine of Rs. 100/- indefault further R.I. for one month."

1/p. 23

Letter from the Government Pleader, High Court, Bombay, No. 1921 dated the 12th July 1947 forwarding an uncertified copy of the High Court, judgment.

RESOLUTION.- The result of the Application is recorded.

Submitted for signature.
DDM
24/7.

By order of the Governor of Bombay,

Original SBS Palekar

S. B. Palekar,

Deputy Secretary to Government.

To

The Home Department,
The Commissioner, Southern Division,
The District Magistrate, Dharwar.

BM.

Issued
24/7

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Subject: Proposals for filing appeals in the High Court against the order of acquittal passed by the Hon.Magistrate F.C(Mr.Huilgol) Gadag in C.C Nos.10/47,11/47,and 12/47.

NO.MPP.SR.23 Letter. Dharwar, 24/10/1947.
To

The Remembrancer of Legal Affairs, Bombay.

D.S.P. Dharwar's

I am forward herewith a copy of the letter No.745 dated 25/7/1947, along with its accompaniments in original recommending the filing of an appeal against the orders of acquittal passed by the Hon.Magistrate F.C.Gadag on 14/6/1947 in the three cases C.C.Nos.10/47, 11/47 and 12/47.

go by Regd AD

2. The Magistrate has acquitted the accused in each case on the ground that the accused had taken jowar for sale to the Government godown on the kacha permit issued to him by Village officers. On going through the records in each case, I am of opinion that there is ample evidence to show that there were no permits in existence at the time of the offence, and that they appear to have been got up afterwards. If such permits had been in existence, they would have been produced at the time and on the spot or at least their existence would have been mentioned to the Police.

3. The delay in sending the case papers has been caused in getting the opinion of the Public Prosecutor, Dharwar in the matter and also in going through the case papers after obtaining further information with regard to the practice of issuing permits in such cases. The address of each accused is as stated by him in his statement before the original Court.

4. In the circumstances, I would request you to move Government to file appeals in the High Court against the orders of acquittal under reference.

THE SPECIAL ART TO GOVERNMENT
LEGAL DEPARTMENT
File No. 13009
Sub No. 28-10-47
BB

District Magistrate, Dharwar.

Accompaniments

1. Original Case papers in C.C Nos 10/47, 11/47, 12/47

L. D
27 OCT 1947
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